

KENNETH REDD,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

This matter is before the Court on the government's Motion for an Order to Produce Affidavit. For the following reasons, the motion will be denied.

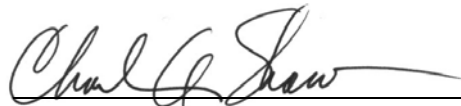
The government cites Wright v. United States, 2008 WL 4276206 (D. Del. Sept. 17, 2008), for the proposition that while an evidentiary hearing could be conducted on the allegations of ineffective assistance of counsel, the “missing” information can be obtained more expeditiously by requiring Movant’s former defense attorney to provide an affidavit responding to the allegations

raised in his § 2255 motion. Id. at * 3. Wright is procedurally distinguishable from the instant case because there the government had filed its answer to the § 2255 motion and the court denied two of the movant's three claims. Apparently on its own motion, the court ordered former defense counsel to submit an affidavit concerning the remaining allegations of ineffective assistance of counsel, in lieu of holding an evidentiary hearing on the claim. The Court has previously declined to follow Wright in the present procedural context, see Fischer v. United States, No. 4:09-CV-1763 CAS (E.D. Mo. Dec. 9, 2009), and declines to do so now.

The Court has reviewed the allegations of the § 2255 motion with respect to ineffective assistance of counsel, and concludes that the government should be able to file its answer as required by Rule 5(b) without an affidavit from defense counsel. The Motion for an Order to Produce Affidavit should therefore be denied.

Accordingly,

IT IS HEREBY ORDERED that the government's Motion for an Order to Produce Affidavit is **DENIED**. [Doc. 12]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 20th day of January, 2010.